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FILED
07 OCT 29 PM 1:40
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

5 Attorney for Plaintiff JACOB CALANNO

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

07 CV 2052 BTM (POR)

10 JACOB CALANNO, a California
11 citizen,

12 Plaintiff,

13 vs.

14 TERRA VAC CORPORATION, a
California corporation; TERRA-VAC,
15 INC., a corporation, dba TERRA-VAC,
P.R.; and DOES 1 through 100,
16 inclusive,

17 Defendants.
18

CASE NO. _____

COMPLAINT FOR VIOLATION OF
FEDERAL FALSE CLAIMS ACT (31 USC
§3730(h)); MISREPRESENTATION TO
POTENTIAL EMPLOYER (Civil Code
§§1050, 1054); LIBEL AND SLANDER
PER SE (Civil Code §§44-46)

JURY TRIAL DEMANDED

19 Plaintiff JACOB CALANNO ("Plaintiff" or "CALANNO") alleges as follows:

20 GENERAL ALLEGATIONS

- 21 1. Plaintiff resides and at all relevant times has resided in the County of
22 Imperial, State of California.
- 23 2. Defendant TERRA VAC CORPORATION ("Defendant" or "TERRA VAC") is
24 a corporation organized in the state of California. Plaintiff is informed and believes that
25 TERRA VAC's corporate charter has been forfeited.
- 26 3. Defendant TERRA-VAC, INC. ("Defendant" or "TERRA-VAC, P.R.") is a
27 corporation organized in an unincorporated territory of the United States. Plaintiff is
28 informed and believes it is doing business as TERRA-VAC, P.R. Plaintiff is informed and

1 believes that TERRA VAC and TERRA-VAC, P.R. operate as one entity, sharing
2 personnel and financial functions such that each is the alter ego of the other.

3 4. Defendants at all relevant times have done business in Imperial County,
4 State of California.

5 5. Defendants directed Plaintiff in all his job duties and retained the right to
6 control all material aspects of his employment.

7 6. Plaintiff is ignorant of the true names and capacities of Defendants sued
8 herein as DOES 1 through 100, inclusive, and therefore sues these Defendants by such
9 fictitious names. Plaintiff will amend this complaint to allege the true names and
10 capacities of these DOE Defendants when ascertained. Plaintiff is informed and
11 believes and thereon alleges that each of such fictitiously named Defendants is
12 responsible in some manner for the occurrences alleged herein, and that the injuries
13 alleged herein were proximately caused by acts of such DOE Defendants.

14 7. All of the described conduct, acts and failures to act described hereinbelow
15 were performed by, and are attributed to, all Defendants, acting as agents and
16 employees under the direction and control of the other Defendants, except where
17 specifically alleged otherwise. These acts and failures to act were within the scope of
18 such agency and/or employment, unless stated otherwise, and each Defendant ratified
19 the acts and omissions of each of the other Defendants. Each of these acts and failures
20 to act is alleged against each Defendant whether acting individually, jointly or severally.

21 **FACTUAL ALLEGATIONS**

22 8. Plaintiff was hired by OHM, a corporation located in Findlay, Ohio, in 1997.
23 Plaintiff was assigned to work at El Centro Naval Air Facility ("Airbase") under a contract
24 between OHM and the U.S. Navy.

25 9. Foster Wheeler built and maintained an incinerator on Airbase. Foster
26 Wheeler, then Cape Environmental, operated the incinerator and performed other
27 environmental tasks at Airbase under a series of one-year contracts with the Navy.
28 Plaintiff is informed and believes that Defendants' contract contained a six-month

1 probationary term.

2 10. Plaintiff was employed continuously by each company who obtained the
3 Airbase environmental contract. Plaintiff agreed with each successive employer,
4 including Defendants, that each such successive employer would continue to vest and
5 fund Plaintiff's pension. By 2005, Plaintiff was senior incinerator operator and field
6 operations supervisor.

7 11. As part of the contract, Defendants and their predecessors dug wells and
8 drew water from the bottom by use of "slurp tubes." Mixed in and with the water were
9 contaminant vapors such as lead, mercury, aviation fuel and sewage. One of Plaintiff's
10 duties was to separate and incinerate the contaminant vapors.

11 12. The slurp tubes also brought up debris, which was trapped in a filter
12 screen, and the filter was cleaned manually.

13 13. James Keegan, Defendants' project manager, directed Plaintiff to raise the
14 slurp tube three feet off the bottom of the wells. This resulted in reducing the effluent
15 trapped in the filter, thus benefitting Defendants by cutting filter supply costs and labor
16 costs. Raising the tubes, however, resulted in an inability to bring up the toxic vapors
17 that Plaintiff was employed to incinerate. Keegan also ordered that the gas used for
18 calibrating the meter that monitored contaminants be changed from methane to hexane,
19 which caused the numbers Defendants reported to Navy to increase, even if the actual
20 performance did not change.

21 14. To monitor performance of the cleanup contract, the Navy held monthly
22 meetings with Defendants' personnel, including Plaintiff and Keegan. It also required
23 maintenance of VEP Monitoring Logs, which were provided to the Navy for review.

24 15. The result of Defendants' manipulations was to compromise the efficiency
25 of the project and damage the wells if they were not maintained properly. At meetings
26 with Navy personnel, Vice President Jim Keegan misrepresented these manipulations
27 and misrepresented the performance and effectiveness of the vapor removal. Since
28 Defendants had a performance-based contract with the Navy, and since renewal of

1 Defendants' contract was contingent on a positive performance review, Keegan's
2 misleading statements were intended to and did defraud the federal government, and
3 were intended to and did benefit Defendants.

4 16. In late September or early October 2005, Plaintiff discovered that
5 Defendants were not in compliance with regulations of the California Air Pollution Control
6 Board, which sets a maximum ppm for emissions. Plaintiff immediately reported this to
7 Keegan on his daily report form. Readings were retaken but Keegan dismissed the high
8 numbers as a "spike." Plaintiff double-checked Keegan's spike, but could not confirm it.
9 He suspected that Defendants were misrepresenting its emissions to the Navy.

10 17. On October 5, 2005 Plaintiff informed the Navy of Defendants' fraudulent
11 activities. Although Plaintiffs' report was anonymous, there are few, if any, other
12 employees of Defendants who could have known all the facts contained in Plaintiff's
13 complaint. In fact, one Navy officer told Plaintiff that Defendants would figure out who
14 made the report. The Navy subsequently hired Bechtel Co. to conduct an independent
15 audit of Defendants. Bechtel's report confirmed Plaintiff's concerns.

16 18. On October 26, 2005, Keegan informed Plaintiff that he was being
17 terminated. His last day of work was October 28, 2005. Keegan alleged poor
18 performance, but was unable to provide any specific incidents to back up his assertion
19 that Plaintiff's performance had not met expectations. Plaintiff requested a written
20 explanation. Keegan provided a written explanation of the reasons for Plaintiff's
21 termination, but the letter was removed from Plaintiff's desk. Whatever the real or
22 purported reason for discharge, Plaintiff is informed and believes that Defendants
23 reported Plaintiffs' termination as its corrective response to criticisms made by
24 investigators.

25 19. Plaintiff is further informed and believes that the Navy subsequently
26 conducted its own investigation and issued a report of its own.

27 ///

28 ///

FIRST CAUSE OF ACTION

**Violation of Federal False Claims Act
(31 USC §3730[h])**

20. Plaintiff hereby incorporates Paragraphs 1 through 19 as though fully set forth herein.

21. Plaintiff was employed by Defendants in 2005. As set forth above, Defendants registered knowingly false claims with the U.S. Navy in 2005.

22. Plaintiff reported these false claims both in regularly-scheduled meetings with Terra Vac and Navy project personnel and in a separate report to the Navy.

23. As a direct result of its knowledge of Plaintiff's report, and in order to establish Plaintiff as a scapegoat for its own wrongdoing, Defendants discharged Plaintiff from his employment.

24. As a result of Defendants' wrongdoing, Plaintiff suffered loss of reputation and severe emotional distress.

25. As a further result of the discharge, Plaintiff lost past and future income, his pension and other benefits, and suffered other general and special damages, in amounts to be proven at trial.

SECOND CAUSE OF ACTION

**Misrepresentation To Potential Employer
[Civil Code §§1050, 1054]**

26. Plaintiff hereby incorporates Paragraphs 1 through 25 as though fully set forth herein.

27. Plaintiff is informed and believes that employees or agents of Defendants have knowingly misrepresented Plaintiff's performance and the actual reason for his termination to potential employers. These misrepresentations include, but are not limited to, statements that Plaintiff submitted false numbers to Defendants and the Navy.

28. These misrepresentations have caused Plaintiff to suffer further lost reputation and severe emotional distress. The allegations have also negatively impacted

1 Plaintiff's job search and may have effectively ended his career in environmental clean-
2 up.

3 29. Defendants' false reports concerning Plaintiff, his job performance and his
4 character, disseminated or approved by managing agents of Defendants, constitute
5 malice, oppression or fraud directed to Plaintiff.

6 **THIRD CAUSE OF ACTION**

7 **Libel and Slander *Per Se***
8 **(Civil Code §§44-46)**

9 30. Plaintiff hereby incorporates Paragraphs 1 through 29 as though fully set
10 forth herein.

11 31. Plaintiff is informed and believes that Defendants have made written and
12 oral representations as to Plaintiffs' honesty and the quality of his work at Airbase and
13 the reasons for his discharge. These representations are false, and knowingly so.

14 32. Plaintiff is informed and believes that the false representations referred to
15 in ¶31 above were uttered maliciously and with knowledge of their falsity, or with no
16 reasonable grounds to believe them to be true.

17 33. Plaintiff is informed and believes that false representations were published
18 by Defendants' employees to officials of the U.S. Navy, to Bechtel investigators, and to
19 potential employers of Plaintiff, *inter alia*.

20 34. As a result of these false representations, Plaintiff has suffered lost
21 reputation, humiliation, anxiety and mental anguish, and the loss of future compensation
22 and benefits.

23 35. The false representations have further harmed Plaintiff by limiting his ability
24 to pursue his chosen occupation or career, and thus impaired his earning capacity.

25 36. The false representations concerning Plaintiff were published or approved
26 by managing agents of Defendants, and constitute malice, oppression and fraud.

27 ///

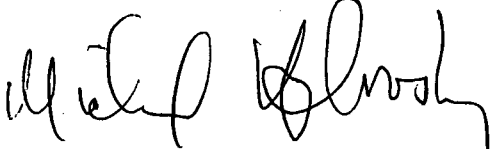
28 ///

PRAYER FOR RELIEF

WHEREFOR, Plaintiff JACOB CALANNO prays for judgment against Defendants
TERRA VAC CORPORATION and TERRA-VAC, P.R., jointly and severally, as follows:

1. For past, present and future lost compensation and benefits in an amount
to be proven at trial, not less than \$2,000,000.00;
2. For special damages in an amount to be proven at trial, not less than
\$1,000,000.00;
3. For general damages in an amount to be proven at trial, not less than
\$2,000,000.00;
4. For double or treble damages, as authorized by law;
5. For exemplary and punitive damages in an amount sufficient to punish and
set an example of Defendants;
6. For attorney's fees and other costs of bringing suit;
7. For prejudgment interest;
8. For a declaration of alter ego and other rights;
9. For such other relief as the Court may deem just and proper; and
10. For a jury trial.

DATED: October 25, 2007



MICHAEL H. CROSBY
Attorney for Plaintiff
JACOB CALANNO

Complaint.wpd

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

143803 - SR

**October 29, 2007
13:53:41**

Civ Fil Non-Pris

USAO #: 07CV2052 CIV. FIL.

Judge.: BARRY T MOSKOWITZ

Amount.:

\$350.00 CK

Check#: BC#1137

Total-> \$350.00

FROM: CALANNO V. TERRA VAC CORP.
DOES 1 - 100
CIV. FIL.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JACOB CALANNO

DEFENDANTS

TERRA VAC CORPORATION, a corporation, TERRA VAC, INC., a corporation, dba TERRA VAC, P.R., and DOES #100

County of Residence of First Listed Defendant Imperial

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorney's (Firm Name, Address, and Telephone Number)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael H. Crosby, Esq., The Garrettson House,
2366 Front Street, San Diego, CA 92101, (619) 696-7330

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☒ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

31 USC Section 3730(h)

Brief description of cause:

Discharge from employment with contractor at El Centro NAF due to complaints he made to U.S. Navy

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/25/2007

SIGNATURE OF ATTORNEY OF RECORD

Michael H. Crosby

FOR OFFICE USE ONLY

RECEIPT #

143803

AMOUNT

\$ 350.00

APPLYING IFP

JUDGE

MAG. JUDGE

10/29/07

ORIGINAL